



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Corel Corporation

File: B-283862

Date: November 18, 1999

DIGEST

Statutory restriction set forth at 41 U.S.C. § 253j(d) (1994) precludes the review by General Accounting Office of a bid protest challenging the propriety of a delivery order issued under an indefinite-delivery, indefinite-quantity contract, regardless of the propriety of the issuing agency's underlying determination or conduct.

DECISION

Corel Corporation protests the issuance of a delivery order to Government Technologies Services, Inc. (GTSI) by the Department of Labor, for certain Microsoft Corporation products.

We dismiss the protest.

The record reflects that the delivery order was issued by the Department of Labor under indefinite-delivery, indefinite-quantity contract No. NIH263-97-D-0311, operated by the National Institutes of Health (NIH), Department of Health & Human Services.

The Department of Labor (DOL) argues that our Office cannot consider the protest because 41 U.S.C. § 253j(d) (1994) provides that "[a] protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued." See also Federal Acquisition Regulation § 16.505(a)(7).

The protester responds that our Office should consider the protest because DOL's determination to purchase Microsoft products under the NIH contract is tantamount to an improper procurement of the Microsoft products on a sole source basis. In this

regard, the protester contends that DOL's determination to purchase Microsoft products was made after considerable internal review by the agency, including the consideration of a report prepared by a contractor at the agency's request which recommended the purchase of Microsoft products. The protester adds that DOL's choice of a delivery order issued under the NIH contract to procure the Microsoft products should not act as a bar to our Office's review of the agency's actions, in that the protest "is not a complaint against the delivery vehicle for the Microsoft products or the fulfillment agent [GTSI]," but rather constitutes a challenge to "the underlying decision by DOL to select Microsoft products on a sole source basis." Protester's Response to the Agency's Request for Summary Dismissal at 9.

Despite the protester's view to the contrary, we see no reason why the statutory restriction on protests set forth at 41 U.S.C. § 253j(d) is not applicable here. The protester does not argue that the order increases the scope, period, or maximum value of the contract, or implements a "downselect" that results in the elimination of one of the vendors to which a delivery order contract has been issued from consideration for future orders. See Electro-Voice, Inc., B-278319; B-278319.2, Jan.15, 1998, 98-1 CPD ¶ 23 at 2. Accordingly, whether DOL's issuance of the delivery order to GTSI is tantamount to the award of a contract on a sole source basis is irrelevant. The vehicle by which DOL has elected to purchase the Microsoft products is a delivery order issued under an indefinite-delivery, indefinite-quantity contract operated by NIH, so that our Office, by virtue of the statutory restriction on protests set forth at 41 U.S.C. § 253j(d), is without authority to consider protests connected to the issuance of delivery orders, regardless of the propriety of the issuing agency's underlying determinations or conduct (absent certain exceptions not applicable here).

The protest is dismissed.

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